

Applicants: Charles S.H. Young and Peter J. Hoey
Serial No.: 09/904,669
Filed : July 13, 2001
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REMARKS

Applicants, however, respectfully request that the Examiner reconsider and withdraw the restriction requirement. Under 35 U.S.C. §121, restriction may be required if two or more independent and distinct inventions are claimed in one application.

The inventions of group I-VIII are not independent. Under M.P.E.P. §802.01, "independent" means there is no disclosed relationship between the subject matter claimed. The inventions of Groups I-VIII are drawn to a modified adenovirus and related methods. Applicants therefore maintain that Groups I-VIII are not independent and restriction is not proper.

Furthermore, under M.P.E.P. §803, the Examiner must examine the application on the merits if examination can be made without serious burden, even if the application would include claims to distinct or independent inventions. That is, there are two criteria for a proper requirement for restriction: (1) the invention must be independent and distinct, and (2) there must be a serious burden on the Examiner if restriction were not required.

Applicants respectfully submit that there would not be a serious burden on the Examiner if restriction were not required, because a search of the prior art relevant to the claims of Group I would provide the relevant prior art for Groups II-VIII. Since there is no burden on the Examiner to examine Groups I-VIII together in the subject application, the Examiner must examine the entire

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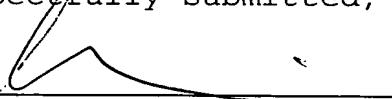
application on the merits.

In view of the foregoing, applicants maintain that restriction is not proper under 35 U.S.C. §121, and respectfully request that the Examiner reconsider and withdraw the requirement for restriction.

If a telephone interview would be of assistance in advancing prosecution of the subject application, applicants' undersigned attorneys invite the Examiner to telephone them at the number provided below.

No fee, other than the enclosed \$55.00 for a one-month extension of time, is deemed necessary in connection with this communication. However, if any additional fee is required, authorization is hereby given to charge the amount of such fee to Deposit Account No. 03-3125.

Respectfully submitted,



I hereby certify that this correspondence is being deposited this date with the U.S. Postal Service with sufficient postage as first class mail in an envelope addressed to:
Assistant Commissioner for Patents,
Washington, D.C. 20231.

Alan J. Morrison
Reg. No. 37,399

10/10/02
Date

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